



Attorney General

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Robert E. Corbin

October 13, 1988

The Honorable Judith Allen
Clerk of the Maricopa County Superior Court
201 West Jefferson
Phoenix, Arizona 85003

Re: I88-105 (R87-146)

Dear Ms. Allen:

You have asked whether the Clerk of the Superior Court may collect a filing fee when a civil action is transferred from Justice Court pursuant to A.R.S. § 22-201(D). We conclude that a filing fee must be charged.

A.R.S. § 22-201(D) provides:

D. Justices of the peace have jurisdiction to try the right to possession of real property when title or ownership is not a subject of inquiry in the action. If in any such action the title or ownership of real property becomes an issue, the justice shall so certify in his docket, and at once stop further proceedings in the action, and forward all papers, together with a certified copy of his docket entries in the action, to the superior court, where the action shall be docketed and determined as though originally brought in the superior court.

A.R.S. § 12-311 states:

At the commencement of each action or proceeding, except as otherwise provided by law, the plaintiff shall pay to the clerk of the superior court forty-five dollars. The defendant, on his appearance, shall pay to the

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clerk thirty dollars. Each defendant appearing by different counsel then his codefendant or codefendants, and answering separately, shall also pay thirty dollars. Such fees shall include all fees to be paid, exclusive of fees for copies and for certifying.

(Emphasis added.) Arizona statutes do not provide that actions transferred from Justice Court pursuant to A.R.S. § 22-201(D) are not subject to the filing fee requirements of A.R.S. § 12-311. We therefore conclude that both the plaintiff's filing fee and the defendant's appearance fee must be paid as provided by A.R.S. § 12-311, because the transfer "commences" the action in superior court.

Sincerely,



BOB CORBIN
Attorney General

BC:JDR:txc